EASOW PLANTATIONS SDN. BHD.

v.

MOSBERT BHD. & ANOTHER CASE

SUPREME COURT, KUALA LUMPUR
SALLEH ABAS LP
ABDUL HAMID CJ (MALAYA)
LEE HUN HOE CJ (BORNEO)
[CIVIL APPEAL NO. 40 & NO. 111 OF 1987]
30 DECEMBER 1987

LAND LAW: *Private caveat - Lodged in respect of 26 sublots with total area of 156,000 sq. ft. - Nature of claim - Caveator's claim (Assignee) based on assignment obtained from another company (Assignor) in respect of 26 sublots - Effect of caveat limited to area of 156,000 sq. ft. - Caveat entry application did not state how other company (Assignor) obtained its interest in land - Effect of missing link - Whether in breach of s. 323(2) National Land Code.*

LAND LAW: *Private caveat - Claim based on purchase of a sublot from registered owner - Caveat limited to area of sublot - Whether in compliance with s. 323(2) National Land Code - Caveat to stay.*

In this case there were two appeals in relation to entry of private caveats on land pursuant to s. 323 of the National Land Code. In Civil Appeal No. 40/87 the appeal was against the decision of the High Court, Johore Bahru (Shankar J) which ordered the removal of the caveat filed by the appellants. In civil Appeal No. 111/87 the appeal was also against the decision of the High Court, Johore Bahru (Yusof J) which ordered the removal of the caveat filed by the appellant. Hence both the appeals.

Held:

[1] Although the appellants (Civil Appeal No. 40/87) had limited their caveat only to the portion of the piece of land which they claimed being 26 sublots with a total area of 156,000 sq. ft. and not the whole land area, the appellant's caveat entry application did not state how the company Module Construction Sdn. Bhd. from whom they claimed to have obtained an assignment for the 26 sublots obtained its interest in the land. There was simply no connection between the company Module Construction and the purchaser or the respondents.

[2] Since the land is vested in the respondents, this missing link does not satisfy the requirement of s. 323 (2) of the National Land Code. Hence the conclusion reached by the learned Judge (Shankar J) was unassailable. Therefore the appeal was dismissed with costs.

[3] The appellant by (Civil Appeal No. 111/87) his caveat entry application (Form 19B) in effect had complied with whatever objection that could be found in s. 323 (2) of the National Land Code (Act 56/65) and also, the caveat was limited to the area of 6,050 sq. ft. relating to the sublot which he had purchased from the respondents.

[4] Hence in this case the appellant's caveat should stay and the appeal was allowed with costs.

[Appeal dismissed with costs in Civil Appeal No. 40/87. Deposit ordered to be paid to respondents towards taxed costs. Appeal allowed with costs in Civil Appeal No. 111/87. Deposit ordered to be refunded to appellant.]

Cases referred to:
Mosbert Berhad (In Liquidation) v. Stella D'Cruz [1985] 2 MLJ 446
N.Vengadasalam v. Mahadevan & Anor [1976] 2 MLJ 161

Legislation referred to:
National Land Code 1965, s. 323(2)

For the appellants (Civil Appeal 40/87) - D.P. Naban; M/s. Skrine & Co.
For the appellant (Civil Appeal 111/87) - Thara Singh Sidhu & Raghbir Singh Gill; M/s. Thara Singh Sidhu & Co.
For the respondents (in both Appeals) - P. Suppiah; M/s. P. Suppiah & Co.

JUDGMENT

Salleh Abas LP:

Civil Appeal No. 40 of 1987

Mosbert Berhad is the registered owner of Lot 83 held under Grant No. 72, Mukim of Plentong, Johore Bahru, with a total area of 113a. 2r. 20p.

Before going into liquidation, Mosbert privately subdivided this land into several sublots each with about 6,000 sq. ft. in area, and sold the subdivided lots to various purchasers. After paying for these sublots the purchasers entered caveats in order to protect their interest in the land.

After Mosbert had gone into liquidation, the liquidator sold the whole land Lot 83 to a Company called Jet Age. In order to enable the land to be registered in their name, Jet Age applied to the Johore Bahru High Court to have these caveats removed.

In the Civil Appeal No. 40 of 1987, the caveat was lodged by a Company called Easow Plantations Sdn. Bhd. in respect of 26 sublots with a total area of 156,000 sq. ft. The application by the liquidator to have the caveat removed was allowed by Shankar J. The ground given by the learned Judge was that he was bound by the decision of the Supreme Court in *Mosbert Berhad (In Liquidation) v. Stella D'Cruz* [1985] 2 MLJ 446. According to this case, a person claiming only a portion of a piece of land should caveat only a portion of it and if he caveats the whole land such caveat is void and is of no effect.

According to the caveat entry application by Easow, the caveat was limited only to the area of the 26 sublots which it claimed, i.e. 156,000 sq. ft. and not the whole land area, which is 113a. 2r. 20p. Therefore, the application of the *Stella D'Cruz* case should end in Easow's favour. However, there is one material question which Easow had to surmount, in that under s. 323 (2), it has to state the nature of the claim on which the application is based. In its caveat entry application (Form 19B), Easow claimed the 26 sublots by virtue of an assignment it took from another company called Module Construction Sdn. Bhd. The application, however, did not say how Module Construction obtained its interest in the land. There is simply no connection between Module Construction and the purchaser or Mosbert Berhad. Since the land is vested in Mosbert Berhad, this missing link, in our view, does not satisfy the requirement of s.323 (2). Hence the conclusion reached by the learned Judge is unassailable. We therefore dismiss the appeal with costs and order the deposit to be paid to the respondents towards taxed costs.

Civil Appeal No. 111 of 1987

In Civil Appeal No. 111 of 1987, the caveat was entered at the instance of Ranjit Singh a/l Inder Singh, who purchased one of the sublots from Mosbert Berhad.

Upon application by Jet Age to remove the caveat, Yusof J allowed the application and ordered the removal of the caveat.

In his caveat entry application (From 19B), Ranjit Singh s/o Inder Singh mentioned that he purchased the sublot from Mosbert Berhad and that the caveat was only limited to the area of 6,050 sq. ft. relating to his sublot. Thus in effect he had complied with whatever objection that could be found in s. 323 (2) of the National Land Code (Act 56 of 1965), and also *Stella D'Cruz* case [1985] 2 MLJ p. 445, as to the effective area of the caveat. What he did is also consistent with the judgment of the Federal Court in *N.Vengadasalam v. Mahadevan & Anor* [1976] 2 MLJ 161. Hence in his case the caveat should stay. We therefore allow the appeal with costs both here and the Court below. We order that the deposit be refunded to the appellant.

Also found at [1988] 1 CLJ 123